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IN THE

SUPREME COURT OF THE UNITED STATES.

Ocober Term, 1954. No.

THEODORE K. NITTERHOUSE,
Petitioner,

VS.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Theodore K. Nitterhouse respectfully represents:

SUMMARY STATEMENT OF THE FACTS.

The plaintiff duly brought this civil action against the United States for the return of income tax in amount of

$3,617.93 alleged to have been erroneously paid for the year 1946, on the gain on condemned land.

The facts were stipulated.[1]

On May 12, 1943, plaintiff bought (inter alia) 21.476 acres of land in Franklin County, Pennsylvania, for $2,147.60. More than six months later, to wit, on December 2, 1943, the United States of America, in its exercise of eminent domain, condemned said land by a decree of condemnation and immediate possession with a fee simple title entered in the United States District Court for the Middle District of Pennsylvania (Civil Action No. 1278).

On April 4, 1944, the United States deposited $5,370.00 to the order of the plaintiff with the Clerk of Court of the Middle District; and thereafter in proceedings in said condemnation action it was determined that the fair market value of the land on the date of the taking, to wit, December 2, 1943, was $18,825.00.

On August 31, 1946, the plaintiff collected said $18,825.00; plus interest on $5,370.00 from the date of the transfer of title, December 2, 1943, to the date of the deposit of that amount to plaintiff's order, i. e., to April 4, 1944, and plus interest on the remainder of $13,455.00 from the date of the transfer of title December 2, 1943, to August 26, 1946.

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[1] Other facts in the Stipulation, Admissions under Rule 36, and the pleadings are not pertinent to the issue raised by the basic facts. Some of them are that on receipt of the money in 1946, plaintiff did not report the profit on his income tax return but, as provided by Section 112 (f) (2) of the Internal Revenue Code, filed Form 1114—Application to Establish a Replacement Fund. The Application was withdrawn by letter of counsel dated November 12, 1948, reading in part: "It appears to be that this gain is taxable as of December 2, 1943, when the United States District Court condemned the land." His 1946 income tax return was thereupon audited by an Internal Revenue Agent, and the Commissioner of Internal Revenue asserted the tax as due for the year 1946,—which was paid on July 14, 1949.

Taxpayer's income for 1943 was $4,836.14. The gain on the condemned land exceeds 25% of that income, so the limitation for assessment of the 1943 deficiency did not expire until five years after March 15, 1944, to wit, on March 15, 1949 (per Section 275 (c) of the Internal Revenue Code).

The plaintiff contends that the gain is recognized for income tax purposes on the date of the sale or exchange, to wit, December 2 in the year 1943.

The defendant argues that the year 1946 is the year of recognition.

The district court found for the defendant, and judgment was entered accordingly.

The Court of Appeals for the Third Circuit affirmed.

JURISDICTION.

The Court of Appeals refused plaintiff's petition for rehearing on November 12, 1953. The jurisdiction of your Honorable Court is invoked under the Act of June 25, 1948, Chapter 646, 62 Stat. 928 (28 U. S. C. A. 1254).

QUESTIONS PRESENTED.

1. If a claim for private property taken for public use has no fair market value, is it just compensation?

2. What is the year of recognition of gain or loss when private property is condemned, the year title and possession passes or the year the price is collected with interest from the date of the taking?

REASONS FOR GRANTING THE WRIT.

1. The year of recognition of gain or loss in eminent domain proceedings should be determined.

2. The decision of the court below is in conflict with *Kieselbach v. Commissioner,* 317 U. S. 399 (1943).

3. Because a holding period cannot end without a taxable sale.

Wherefore your petitioner prays that a writ of certiorari issue *sec. leg. et sec. reg.*

THEODORE K. NITTERHOUSE,
Petitioner.
By: HENRY D. O'CONNOR,
Attorney for Petitioner.

PETITIONER'S BRIEF.

Value.

A claim against the United States bearing legal interest is a thing of some value.

The Supreme Court of the United States said in the *Kieselbach* case, 317 U. S. 399, that in a case like the present:

> "The transaction was as though a purchase money lien at legal interest was retained upon the property."

The court below dismisses your statement as a figure of speech.

It is a necessary premise to your conclusion.

It is the statutory duty of Commissioner of Internal Revenue to fix a fair market value on any property, be it a promise written or an obligation statutory, when a sale or exchange takes place, and the values he has fixed on mere promises "to pay money at some future date" have often been the subject of litigation; a purchase money lien in *Shubin v. Comm.*, 67 F. 2d 199 (1933), a second mortgage in *Piper v. Comm.*, 84 F. 2d 560 (1936), and many cases in the Tax Court.

The Commissioner must value any economic benefit received by a *cash basis* taxpayer from another: *U. S. v. Drescher,* 179 F. 2d 863, where an employer bought his employee an annuity contract which the employee could not reduce to possession, transfer or hypothecate. The employee received "something greater than zero."

Whereas the taxpayer here relies upon a basic premise of the Supreme Court of the United States in *Kieselbach,* the court below cites pure *dicta* from *Bedell v. Comm.*, 30 F. 2d 622. *Bedell* agreed to sell land in 1919. Title passed in 1920. *Bedell* wanted his gain recognized in 1919 (to offset losses in that year). The Court held that 1920 was the year of recognition.

The *Bedell* case is an early one of a line of cases holding that the year of passage of title and possession is the year of recognition of gain or loss, and not the year of the agreement of sale.

Just as you held in *Kieselbach.*

And whatever you get in exchange must be valued to determine your gain or loss then and there, be it a first, second or third mortgage, or "a purchase money lien at legal interest"—an obligation of the United States.

Cash basis.

I thought everyone knew that when you sold real estate at a profit, you had to pay tax in the year of sale unless you received 30% or less in the first year and elected to report the gain on the installment basis.

The reason is found in the "Table of Contents" of the Internal Revenue Code, under "Supplement B—'Computation of Net Income.'"

> "Section 112. Recognition of Gain or Loss.
> (a) General Rule.—Upon the sale or exchange of property the entire amount of the gain or loss, determined under Section 111, shall be recognized, except as hereinafter provided in this section."

Now the *only* exception as to condemned property is Section 112 (f) providing for a replacement fund, inapplicable here.

Section 111 imposes the tax on

> "* * * Money received plus the fair market value of the property (other than money) received."

It is as simple as that; and no casuistic reasoning can modify it.

This "sale or exchange" principle is a fundamental income tax concept. It is the recognized "taxable event," and is always recognized unless by specific provision of the Code it is not recognized in which case some other previous sale or exchange is recognized in its place.

Between the taxable event in acquisition of property, and the taxable event in disposing of property, lies the "holding period."

(purchase) (sale)

'. . . . . .'

(holding period)

The court below would have the taxpayer's holding period end without a recognized sale. It would put him in limbo or escrow. But you cannot have a holding period end without a taxable sale or exchange. This is axiomatic.

Again referring to the "Table of Contents" of the Code, Part IV covering the Sections in the 40's is entitled "Accounting periods and Methods of Accounting," and the general rules there give way to the specific rules for the "Computation of Net Income" starting with Section 111.

If the mode of bookkeeping by a taxpayer had anything to do with the specific rules of Supplement B, courts and counsel have wasted much effort on difficult problems which could have been disposed of by answering the simple question of how does the taxpayer keep his books.

Conclusion.

The Second Circuit had adopted an easily administered rule for the taxation of gain on condemnation. Nothing was recognized until payment was received. Then the whole fund, including compensation for delay in payment, was considered as proceeds received on sale.

The Third Circuit, I think properly, disagreed with the Second in *Kieselbach*, 127 F. 2d 359. It held that the sale took place on the date title passed (from which interest was computed) and the holding period for capital gains ended on that date; and that the interest computed from that date was ordinary income and not proceeds of sale.*

You allowed certiorari only on the question of whether or not the interest was ordinary income or part of the proceeds.

---

* It is fundamental that title passes on condemnation and before payment: **Comm. v. Schaffer**, 32 Pa. Superior 375.

To affirm the conclusion that interest was ordinary income, you wrote, referring to the date of condemnation:

> "This was the sale. * * * The transaction was as though a purchase money lien at legal interest was retained upon the property."

Therefore the year of the sale is the year of recognition.

It is respectfully submitted that the petition for writ of certiorari should be granted.

HENRY D. O'CONNOR,
Attorney for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 584

THEODORE K. NITTERHOUSE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 12–16) is reported at 207 F. 2d 618. The opinion of the District Court (R. 5a–11a) is reported at 111 F. Supp. 339.

JURISDICTION

The judgment of the Court of Appeals was entered on October 12, 1953. (R. 17.) A petition for rehearing (R. 18–27), timely filed by the taxpayer, was denied without opinion on November 12, 1953 (R. 28). The petition for a writ of certiorari was filed on February 9, 1954. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Whether the Court of Appeals erred in holding that the taxpayer should report as income for 1946 gain realized from the sale of property, title to which passed in 1943 or 1944 pursuant to an eminent domain proceeding, where the amount of the award was not established and paid until 1946.

STATUTES AND REGULATIONS INVOLVED

These will be found in the Appendix, *infra*, pp. 8–12.

STATEMENT

The facts as found by the District Court (R. 5a–11a), all of which were stipulated (R. 2a–5a), may be summarized as follows:

During the years involved, taxpayer's income tax returns were filed on the cash basis (R. 5a, 7a).

On May 12, 1943, taxpayer purchased certain real estate in Franklin County, Pennsylvania, paying $2,147.60 for the 21.476 acres herein involved. More than six months later, on December 2, 1943, the United States instituted an action to condemn the land by filing a petition for condemnation in the United States District Court for the Middle District of Pennsylvania. On April 4, 1944, the United States deposited the sum of $5,370 in the registry of the court on account of the just compensation to be awarded to the taxpayer in the proceedings. Judgment

for $18,825 plus interest in accordance with the requirements of the Act of February 26, 1931, c. 307, 46 Stat. 1421, Section 1 (40 U. S. C. 1946 ed., Sec. 258a), was entered in favor of the taxpayer on March 14, 1946. On August 26, 1946, taxpayer received a check for $20,596.84 in payment. This sum consisted of $18,825 for the value of the land, and $1,771.84 for interest on $5,370 from December 2, 1943, to April 4, 1944, and on the balance of $13,455 from December 2, 1943, to the date of the issuance of the check.[1] In the same year taxpayer paid $2,700 representing counsel fees and costs attributable to the condemnation proceedings. (R. 3a, 4a, 6a.)

Prior to receiving payment, the taxpayer did not file an application for the recovery of the deposit of $5,370. Nor did he include any sum attributable to the deposit money or any part of the award in his income tax returns for the calendar years 1943 through 1946. The Commissioner recomputed taxpayer's return for the year 1946 and determined that the total gain in excess of the adjusted basis resulting from the condemnation proceedings was income in 1946. The resulting deficiency was assessed on June 16, 1949, and paid by the taxpayer a month later. The taxpayer's claim for refund, filed March 2,

[1] A mistake in the calculation of interest on the judgment of March 26, 1946, was later corrected; and on June 23, 1950, the United States deposited the sum of $541.86 representing the deficiency in interest payment on $13,455.

1950, has not been acted upon by the Commissioner. (R. 6a–7a).

The District Court sustained the action of the Commissioner (R. 5a–11a), holding that "the taxpayer received no money and no property having a fair market value prior to 1946, and the gain to him from the condemnation proceedings occurred in 1946, the year in which he received payment." (R. 10a.) The Court of Appeals affirmed (R. 12–16), pointing out that the amount of the award was unascertained when the taxpayer's property was first condemned and that the cash-basis taxpayer was taxable when he received his money, in 1946 (R. 13, 15).

ARGUMENT

This case presents no question calling for review by this Court. There is no conflict of decisions, and both courts below have correctly resolved the narrow issue involved.

Under Section 42 of the Internal Revenue Code (Appendix, *infra,* p. 8), and Section 29.42–1 of Treasury Regulations 111 (Appendix, *infra,* pp. 9–11), a taxpayer on the cash basis, as is the taxpayer in this case, reports his income in the year of its receipt. Section 111 (a) of the Internal Revenue Code (Appendix, *infra,* p. 8), provides for the taxation of any gain realized from the sale of property.[2] Subsections (a) and

[2] A condemnation of land amounts to a sale or exchange for purposes of income taxation. *Helvering* v. *Hammel,* 311 U. S. 504.

(b) of Section 111 together define "gain" as being the excess of the sum of any money received, plus the fair market value of any property (other than money) received, over the adjusted basis of the property being disposed of.

As both courts below held (R. 10a, 13), taxpayer incurred no tax liability as a result of the condemnation of his land until 1946, the year of actual receipt of payment from the Government. It was not until that year that his condemnation award became definitely fixed and ascertained in amount, upon the entry of the court's judgment on March 14, 1946.[3] *North American Oil* v. *Burnet,* 286 U. S. 417, 423–424.

Taxpayer argues, however, that the award determined and paid to him in 1946 should be treated as if he had received it in 1943 when the condemnation proceedings were instituted (and when, he asserts, title passed). He bottoms this contention on the statement in *Kieselbach* v. *Commissioner,* 317 U. S. 399, 403, that, for the wholly different question involved in that case, the condemnation and passage of title could be viewed "as though a purchase money lien at legal interest was retained upon the property." Building upon this statement, he urges that he acquired a "purchase money lien" when the

[3] A deposit in a condemnation proceeding in the registry of the court is in no sense a measure of the amount the owner is to receive, either as a maximum or a minimum. *United States* v. *Miller,* 317 U. S. 369, 381–382.

property was condemned, and that his gain should be taxed as of that time though its amount was neither known nor received until three years later. The contention, we submit, is clearly without merit. The Court was concerned in *Kieselbach* with the "single narrow point" (317 U. S. at 400) whether "interest" received as part of the compensation in a condemnation proceeding was to be treated as capital gain or ordinary income. In that context, the analogy to a sale and purchase money lien aptly illustrated the difference between the "sale price" and "indemnification for delay" in its payment. *Id.* at 404. But nothing in that analysis of when title passed and what constituted the "sale price" furthers the taxpayer's argument here that he may for tax purposes treat a gain realized in 1946 as if it had been realized in 1943.

In short, as observed by the court below, the taxpayer's reliance on *Kieselbach* (in which this Court affirmed the court below) "is an instance of the familiar situation that we so often find presented when language used in one context is sought to be applied in a quite different situation." (R. 14–15.) The fact that title passed and this cash-basis taxpayer acquired an indeterminate claim against the United States in 1943 or 1944 cannot obscure the decisive fact that his award was received, and his gain determined, in 1946. Apposite here is the observation of Judge Learned Hand, in *Bedell* v. *Commissioner,* 30 F.

2d 622, 624 (C. A. 2d), adopted by the court below (R. 15), that "if land or a chattel is sold, and title passes merely upon a promise to pay money at some future date, to speak of the promise as property exchanged for the title appears to us a strained use of language, when calculating profit under the income tax." The taxpayer may have acquired a "claim" or a "promise" or a figurative "lien" when his land was condemned in 1943; he realized a *gain,* as the courts below held, in 1946, when he was paid.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.

H. BRIAN HOLLAND,
Assistant Attorney General.

ELLIS N. SLACK,
ROBERT B. ROSS,
Special Assistants to the Attorney General.

MARCH 1954.

APPENDIX

Internal Revenue Code:

SEC. 42. *Period in Which Items of Gross Income Included.*

(a) [as amended by Sec. 114, Revenue Act of 1941, c. 412, 55 Stat. 687] *General Rule.*—The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period. * * *

* * * * * * *

(26 U. S. C. 1946 ed., Sec. 42.)

SEC. 111. *Determination of Amount of, and Recognition of, Gain or Loss.*

(a) *Computation of Gain or Loss.*—The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis * * *

(b) *Amount realized.*—The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

* * * * * * *

(26 U. S. C. 1946 ed., Sec. 111.)

SEC. 112. *Recognition of Gain or Loss.*

(a) *General Rule.*—Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized * * *

* * * * * * *

(26 U. S. C. 1946 ed., Sec. 112.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.41–1. *Computation of Net Income.*—Net income must be computed with respect to a fixed period. Usually that period is 12 months and is known as the taxable year. Items of income and of expenditure which as gross income and deductions are elements in the computation of net income need not be in the form of cash. It is sufficient that such items, if otherwise properly included in the computation, can be valued in terms of money. The time as of which any item of gross income or any deduction is to be accounted for must be determined in the light of the fundamental rule that the computation shall be made in such a manner as clearly reflects the taxpayer's income. If the method of accounting regularly employed by him in keeping his books clearly reflects his income, it is to be followed with respect to the time as of which items of gross income and deductions are to be accounted for. (See sections 29.42–1 to 29.42–3, inclusive.) If the taxpayer does not regularly employ a method of accounting which clearly reflects his income, the computation shall be made in such manner as in the opinion of the Commissioner clearly reflects it.

SEC. 29.42–1 [as amended by T. D. 5405, 1944 Cum. Bull. 154]. *When Included in Gross Income.*—(a) *In general.*—Except as otherwise provided in section 42, gains, profits, and income are to be included in the gross income for the taxable year in which they are received by the taxpayer,

unless they are included as of a different period in accordance with the approved method of accounting followed by him. (See sections 29.41–1 to 29.41–3, inclusive.) (As to income from noninterest-bearing obligations issued at discount, see section 29.42–6, and as to income from short-term obligations issued on a discount basis, see section 29.42–7.) If no determination of compensation is had until the completion of the services, the amount received is ordinarily income for the taxable year of its determination, if the return is rendered on the accrual basis; or, for the taxable year in which received, if the return is rendered on the receipts and disbursements basis. If a person sues in one year on a pecuniary claim or for property, and money or property is recovered on a judgment therefor in a later year, income is realized in the later year, assuming that the money or property would have been income in the earlier year if then received. This is true of a recovery for patent infringement. Bad debts or accounts charged off subsequent to March 1, 1913, because of the fact that they were determined to be worthless, which are subsequently recovered, whether or not by suit, constitute income for the year in which recovered, regardless of the date when the amounts were charged off. (See section 29.23(k)–1.) Except as otherwise stated in this subsection, such items as claims for compensation under canceled Government contracts constitute income for the year in which they are allowed or their value is otherwise definitely determined, if the return is rendered on the accrual basis; or for the year in which received, if the return is rendered on the basis of cash receipts and disbursements. In the case of

a termination of a war contract as defined by section 3 of the Contract Settlement Act of 1944 (or the termination of any other Government contract as to which the right to compensation is definitely fixed and the measure thereof is determinable with reasonable accuracy), if the return is rendered on a basis other than cash receipts and disbursements, compensation for the termination shall, unless a different method of reporting is prescribed or approved by the Commissioner, constitute income for the taxable year in which falls the effective date of the termination, except that if any part of the compensation is attributable to cost, expenses, or losses incurred in a subsequent year such part of the compensation shall be returned as income for the subsequent year.

* * * * * * *

SEC. 29.42–2. *Income Not Reduced to Possession.*—Income which is credited to the account of or set apart for a taxpayer and which may be drawn upon by him at any time is subject to tax for the year during which so credited or set apart, although not then actually reduced to possession. To constitute receipt in such a case the income must be credited or set apart to the taxpayer without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition. A book entry, if made, should indicate an absolute transfer from one account to another. If a corporation contingently credits its employees with bonus stock, but

the stock is not available to such employees until some future date, the mere crediting on the books of the corporation does not constitute receipt.

U. S. GOVERNMENT PRINTING OFFICE: 1954

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

If only to save the treasury from the consequences of its short-sightedness, *certiorari* should be allowed and the question of the year of gain on condemnation determined. Right now, today, in the Philadelphia area alone, because of the Independence Hall Mall project and the Pennsylvania Turnpike Extension, hundreds of condemnation proceedings are pending. If the year the money is paid is the year of taxation rather than the year of sale, the government will lose thousands of dollars because of the lower rates in 1954.

When the sovereign power of eminent domain is exercised, title immediately passes; the former owner can no longer maintain trespass, and liens against the land need not be revived for they now are against the fund. To justly compensate the former owner, the Court charged with fixing the value on the day of taking should abjure all other business and sit the next day and determine the fair market value. Because the Court did not do so, but waited several years, the petitioner has to pay more income tax. The respondent *agrees* that the taxpayer did not hold it after the condemnation in 1943, but says that after that event the taxpayer held in exchange for his land a lot of worthless nothing; until he was paid with interest in 1946.

This is not only illogical, but so absurd as to be indecent. The respondent cannot be right in *Kieselbach* and right in *Nitterhouse*. When a taxpayer's holding period ends, he holds something else—you called it a "purchase money lien" —and it is elementary tax law that the "something" is taxable income unless it is worthless; not so in the case at bar for it had the identical value as the land taken. The history of Section 111, as found on pages 684 to 687 of Seidman's "Legislative History of the Federal Income Tax Laws," shows that the amount realized from sales is *always* recognized *when the sale is made*, regardless of the accounting method of a taxpayer. Make a sale, and you pay a tax. Sec-

tion 44 itself bears out the proposition that the accounting method has no bearing whatsoever on reporting gains from sales; for Section 44 makes special rules with regard to *casual* installment sales without distinguishing between cash and accrual basis taxpayers.

Nor do the very Income Tax Regulations on the sales of real estate—and this is a sale of real estate—make any distinction in bookkeeping methods on the reporting of gain on real estate sales: *Reg.* 111, *Sec.* 29, 44-4.

The executory *promise to sell* in *Bedell* of course was not a *sale* in the year 1919 when the contract was made. It is the *sale*—the passing of title—which is taxed by Section 111; and the language quoted by the Court below and by the respondent from the *Bedell* case refers exclusively to the *executory promise*. Here we are **not** arguing about an agreement to sell.

You built your conclusion in *Kieselbach* upon the same sound legal principles upon which we rely.

The respondent builds its argument upon *dicta* generated by *Bedell's* effort to report gain on an executory contract—not a sale.

The respondent makes no effort to refute the principle of the far more recent case of *Drescher*, 179 F. 2d 863, by the same Court which decided *Bedell*, and which convincingly illustrates the principle of income tax law that a taxpayer's method of recording his transactions has no application to the taxation of such transactions.

Make a sale, and a tax is due; unless an exception is made (and there are none here).

The specific takes precedence always over the general; and Section 111 takes precedence over Section 40.

The elementary legal principles applicable to condemnations compel the conclusion that when the decree of condemnation was entered:

> "This was the sale. * * * The transaction was as though a purchase money lien at legal interest was retained upon the property."

It was a sale of real estate, the holding period ended and gain or loss was recognized, then and there. One cannot be there without the other. The ending *is* the recognition and the recognition *is* the ending.

The petitioner respectfully submits *certiorari* should be granted.

Respectfully submitted,

HENRY D. O'CONNOR,
Attorney for Petitioner.

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IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1953. No. 584.

THEODORE K. NITTERHOUSE,
Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

For two reasons, the petitioner, Theodore K. Nitterhouse, asks you to reconsider your denial of certiorari on April 12, 1954:

Due Process.

A principle of fair play (translated—due process) is presented in this case.

The crown has seized a man's property. Instead of paying for it when taken, he is paid two years later; and be cause of the delay **not of his own choosing,** the sovereign

demands more taxes. The terms of sale were thrust upon him. No devious Near East merchant would risk his dubious repute in such a deal, let alone "honest, straightforward Americans."

Technical Changes Act of 1953.

Lest anyone be concerned with the possibility that the taxpayer whose property was thus seized escape taxation, the amendments of the Technical Changes Act of 1953 modifying Section 3801 of the Internal Revenue Code take care of that. No longer may a taxpayer or the government receive a windfall; where the only question is the proper year of recognition of income or deductions, the statute of limitations is tolled.

These two issues are now urged, in addition to the conflict between the decision of the court below with *Comm. v. Kieselbach*, 317 U. S. 399, 127 F. 2d 359; a conflict which unresolved results in another "Heads I win, tails you lose" situation; too often found with tax matters.

The simple question of the correct year of recognition of gain or loss on condemnation cries out for answer, and should not take much of your time. The petitioner prays for *certiorari.*

Respectfully submitted,
THEODORE K. NITTERHOUSE,
Petitioner,
By: HENRY D. O'CONNOR,
Attorney for Petitioner.

CERTIFICATION.

I hereby certify that the foregoing petition is presented in good faith and not for delay.

HENRY D. O'CONNOR.